

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14367 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

PRAVINBHAI ALIAS PAVLO AMARSINHBHAI DEVIPUJAK

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 14367 of 2004
MS SUBHADRA G PATEL for Petitioner No. 1
MRS HB PUNANI, AGP for Respondent No.3
RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 17/02/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the petitioner challenging his detention in pursuance of the

order passed against him by Police Commissioner, Rajkot City, on 15th September, 2004, in exercise of powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is under detention as bootlegger from 15th August, 2004 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that the detaining authority took into two types of materials to arrive at the subjective satisfaction, firstly, the detaining authority took into consideration of six criminal cases registered against the petitioner under the Bombay Prohibition Act, for possessing of prohibited liquor and secondly, the detaining authority took into consideration two incamera statements of the witnesses as recorded by sponsoring authority on 10th September, 2004 and verified by the detaining authority on 11th September, 2004. The identity of the witnesses is not disclosed by the detaining authority claiming privilege under Section 9(2) of the PASA Act.

3. Six cases came to be registered against the petitioner all before Gandhigram Police Station, Rajkot on 15th April, 2002, 4th July, 2002, 13th August, 2002, 20th March, 2003, 15th August, 2003 and 2nd August, 2004. In all cases, it is alleged that the petitioner was found in possession of some quantity of prohibited country liquor. The detaining authority considered exhaustively and thoroughly the investigation papers in all cases registered against the petitioner and came to the conclusion that the petitioner was bootlegger within the meaning of PASA Act. The detaining authority also came to the conclusion that the petitioner was indulged in activities of storing, selling and transporting the prohibited liquor.

4. Secondly, the detaining authority placed reliance upon two incamera statements as aforesaid. The first witness referred to an incident occurred on 22nd May, 2004, the witness was present at the place of his business at about 10.00 A.M. where the petitioner and one of his accomplice approached the witness and demanded Rs.1,000-00 for purchasing country liquor. The witness refused to give any amount to the petitioner. Thereupon, the petitioner started threatening the witness and started giving abuses him. The witness stated that the petitioner and his accomplice were harassing innocent trades men unnecessarily and, therefore, he would go to the police and file a complaint against them. On saying so by the witness, the petitioner and his accomplice both

excited and started beating the witness. The witness raised shouts and, therefore, a crowd was gathered to the place of incident, but nobody intervene due to fear of the petitioner. On the contrary, the petitioner and his accomplice rushed towards the crowd with open knife giving abuses to the crowd, so the people started running helter-skelter, atmosphere of terror and fear was spread and ultimately, by act of supplication, the witness could save himself. The second witness referred to an incident occurred on 29th July, 2004, the witness was present at the place of his business at bout 7.00 P.M., the petitioner and his accomplice came on scooter near the place of the business of the witness with bulk of country liquor and started selling country liquor near the business place of the witness. The witness stated the petitioner and his accomplice not to sell illegal liquor near his business place and to go away from that place. Thereupon, the petitioner and his accomplice both were excited and stated that they would sell liquor on that place only. On that the witness stated that if the petitioner displayed bullying tactics, he would be constrained to file a complaint before the police against them. On saying so by the witness, the petitioner and his accomplice were excited and started beating the petitioner by fists and the petitioner took out knife and threatened the witness that if the witness dared to file a complaint before the police against them, he would be done to death. On account of incident, persons were gathered there, but nobody dared to intervene and on the contrary, the petitioner and his accomplice rushed towards the crowd with open knife and started giving abuses to the crowd. Therefore, the people started running helter-skelter, the atmosphere of fear was spread, ultimately by act of supplication, the witness could save himself.

5. From the above materials, the detaining authority came to the conclusion that the petitioner was head strong and ferocious person and after forming gang for execution of his bootlegging activities was harassing innocent citizen and was beating them. On account of fear of the petitioner nobody dared to file any complaint against the petitioner. In view of the detaining authority, the bootlegging activities of the petitioner were prejudicial to the maintenance of the public order and was adversely affecting the public health. The detaining authority came to the conclusion that the activities of the petitioner were required to be prevented forthwith. After taking into consideration other measures available against the petitioner under the general law, the detaining authority came to the

conclusion that there was no other alternative, except to detain the petitioner under the PASA Act. The detaining authority passed the said order, which is under challenge in this petition.

6. Learned advocate Ms.S.G.Patel for the petitioner and learned AGP Mr.H.M.Prachchhak for the respondent No.3 were heard at length.

7. Out of various grounds urged on behalf of the petitioner and opposed and controverted by learned AGP, it appears that this petition can be examine and disposed of only on the issue that whether there was credible and cogent material placed before the detaining authority to come to the conclusion that by the activities of the petitioner, the public order was disturbed and public health was adversely affected.

8. To reach to the subjective satisfaction that bootlegging activities of the petitioner were prejudicial to the maintenance of public order and public health, the detaining authority must rely upon credible and cogent material indicating that the activities of the detenu directly or indirectly were causing or were likely to cause harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or the public health. While undertaking this exercise, the detaining authority has to draw a clear line between the cases falling within the category of breach of law and order and the cases falling with the category of breach of public order.

9. Referring to the six criminal cases filed against the petitioner under the Bombay Prohibition Act for the possession of prohibited liquor, and going through the investigation papers as placed on record, it is found that those six cases came to be filed against the detenu because he was dealing in prohibited liquor. The possession of prohibited liquor is a breach under the Bombay Prohibition Act and hence cases came to be filed. However, merely filing cases under the Bombay Prohibition Act would not result in a conclusion that the activities of the petitioner were disturbing the public order or was affecting adversely to the public health. At the most, the petitioner might have committed breach of the provisions of law, for which the petitioner may be tried and punished if found guilty, but surely the act constituting the offence in dealing in prohibited liquor cannot be said to have affected the even tempo of the life of the community nor the activities revealed through

the investigating papers indicate that in the activities alleged through these cases, society at large or section of the society or community or particular community was involved. Therefore, these cases may be instances of breach of law and order, but cannot be branded as activities disturbing the public order or affecting the public health.

10. Further while referring to the incamera statements, as recorded by the sponsoring authority and verified by the detaining authority, it must be borne in mind that while reaching to the subjective satisfaction about the alleged activities of the petitioner, it would be necessary for the detaining authority to consider fall out, reach and impact of the activities of the petitioner and thereafter to come to the conclusion that such activities were capable of disturbing the public order. Two incidents, as narrated through incamera statements, reveal individual disputes than to involve society at large or even disturbing the even tempo of the life of the community. The potentiality of the act alleged through incamera statements, even from the bare reading of them, are not capable to be branded as to the activities disturbing the even tempo of life of the community or society at large or section of the society. No widespread danger or harm to the society could be inferred from the statements of the witnesses. Therefore, even after taking them on their face value, those incidents, may be instances of disturbing law and order, which can be taken care of by general law and by no stretch of reasoning, such activities can be branded to be disturbing the public order or affecting adversely to the public health.

11. In the matter of ASHOKBHAI JIVRAJ @ JIVABHAI SOLANKI Vs. POLICE COMMISSIONER, SURAT AND ORS., as reported in 2000 (1) GLH 393, wherein the Division Bench of this Court after considering the decision of the Apex Court, observed in paragraphs No.20 and 21 as under :

"20. The Division Bench then considered the law laid down by the Apex Court in Piyush Kantilal v. Commissioner of Police, Ahmedabad City, AIR 1989 SC 491 and T. Devaki v. State of Tamil Nadu, AIR 1990 SC 1086. In Piyush Kantilal, similar circumstances were before the detaining authority and it was alleged that detention of the detenu was necessary in order to prevent activities of the detenu in maintenance of public order. Similarly, in T. Devaki, panic amongst people in the hall in which the incident took place and in

nearby vicinity was high lighted. It was also alleged that people were scared and had run helter skelter. In spite of such allegations the Supreme Court held that they were not cases of maintenance of public order and hence, an action of preventive detention was uncalled for.

"21. The Division Bench, following the above cases, observed that in the opinion of the Supreme Court, the selective phrases in the statements would not take out the case from maintenance of law and order to that of maintenance of public order and as power of detention could not be used for maintenance of law and order, but only for public order, the order of detention made in such circumstances could not be upheld.

Again, in *Mustakmiya Jabbarmiya Shaikh v. M.M.Mehta, Commissioner of Police and others*, 1995 (2) GLR 1268 (SC), the Supreme Court considered the relevant decisions on point including the decision in *Arun Ghosh v. State of West Bengal*, 1979 (1) SCC 98 and held that stray incidents would not affect "public order" and order of detention cannot be passed in such cases."

12. The present set of facts are squarely covered by the above decision of this Court in the case of *Ashokbhai Jivraj @ Jivabhai Solanki* (Supra) and therefore the subjective satisfaction arrived by the detaining authority in respect of disturbance of public order by the alleged activities of the petitioner cannot be said to be legal, valid and in accordance with law. The order under challenge, therefore, is required to be quashed and set aside on this ground alone.

13. In the result, the petition is allowed. The order passed by the Police Commissioner, Rajkot City on 15th September, 2004, against the petitioner in exercise of powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The detenu Pravin alias Pavlo Amarsinhbhai Devipujak is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule is made absolute. Direct service is permitted.

[J. R. VORA, J.]

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